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No. 76-1701

In the Supreme Court of the United States

October Term, 1976

TENNESSEE VALLEY AUTHORITY,

Petitioner

v.

HIRAM G. HILL, JR., ET AL.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF MONROE COUNTY, TOWN OF TELLICO PLAINS, TENNESSEE, TOWN OF MADISONVILLE, TENNESSEE, TOWN OF VONORE, TENNESSEE, CITY OF SWEETWATER, TENNESSEE, THE LITTLE TENNESSEE RIVER PORT AUTHORITY, MONROE COUNTY CHAMBER OF COMMERCE AND TELLICO AREA SERVICES SYSTEM, AMICI CURIAE, ON BEHALF OF PETITIONER

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INTEREST OF AMICI CURIAE

The interest of the amici curiae in this case can be simply stated. The parties joining in this brief are local governmental and civic organizations, within Monroe County, who are immediately and directly involved with the problems of improving

living standards of the people living in the area affected by this project. They are understandably concerned and alarmed at the prospect of seeing a few special interest groups, who have no responsibility whatever for these people, maintaining a lawsuit to shut down a virtually completed project in which over $100 million of the taxpayers' money has been invested and from which they are about to realize its benefits after a decade of construction. (This figure does not include the several million dollars in local and state money that has been invested toward completion of Tellico.) They view this as a flagrant misuse of the Endangered Species Act which thwarts the intent of Congress and destroys their hopes and plans for a better way of life.

The parties joining in this brief are: Monroe County, Town of Tellico Plains, Tennessee, Town of Madisonville, Tennessee, Town of Vonore, Tennessee, City of Sweetwater, Tennessee, The Little Tennessee River Port Authority, Monroe County Chamber of Commerce and Tellico Area Services System. Appendix A hereto shows that all parties to these proceedings, through counsel, have consented to the filing of this amici curiae brief on behalf of petitioner.

ARGUMENT

The Tellico project is more than a mere dam and reservoir. It is a carefully thought-out multipurpose project designed to enhance the standard of living in a three-county area in east Tennessee and contribute to the general welfare of the Nation. The area directly affected is characterized by a rural agrarian economy, typical of much of Appalachia. Low income and the lack of economic opportunities have led to the steady outmigration of youth. Between 1950 and 1970 almost 20,000 persons left the three-county area. Three-fourths of these were the younger, potentially more productive people in the 15- to 29-year age

group. One of these counties (Monroe) has an unemployment rate of 12 percent, the second highest in the State of Tennessee.

Contrary to what a few of its opponents would have us believe, the Tellico project has the support of an overwhelming majority of the people of the area as shown by numerous public opinion polls conducted in the area since 1964 which have consistently demonstrated overwhelming local support for the Tellico Dam project. In October 1964, a survey of its readers by the Monroe County *Citizen-Democrat* showed that 63-1/3 percent of those responding favored the project. By February 1965, the figure for those favoring was 65 percent as measured in a second survey by the *Citizen-Democrat*. In February 1972, a scientifically conducted poll by Political Surveys and Analysis, Inc. of Princeton, New Jersey, showed that in the three-county area of Blount, Loudon, and Monroe, 69 percent favored the project, 15 percent opposed, and 16 percent were unable to decide.

The most recent poll conducted by Congressman John Duncan of the Second Congressional District of Tennessee indicates that 90 percent of the people in the project area support the project. The county courts of each of the three counties in which the project is located (Monroe, Loudon, and Blount) have officially endorsed the project and are on record as asking for its early completion. Three times during 1977 both houses of the Tennessee Legislature adopted Joint Resolutions, by overwhelming majorities, endorsing the project and recommending to the Congress and the President that it be completed. In the Joint Resolution of April 13, 1977 (adopted by a vote of 96 to 0 in the House and 29 to 2 in the Senate, after the court of appeals halted construction), it is stated, in part, that this project

> . . . will contribute immensely to the future welfare of the people of the State of Tennessee by providing needed jobs,

electric energy, water supply, flood protection, recreation, and otherwise stimulating commerce and creating new employment opportunities for its people; and . . . [completion of the project] is in the best interest of the people of the State of Tennessee, and will avoid unreasonable waste of scarce natural resources and public funds already committed to these projects and fulfill the public needs and plans of local communities which have participated in and contributed towards their development. . . .

With unemployment being perhaps the Nation's number one problem today, it is hardly necessary to stress that the creation of new jobs is one of the most important benefits of the project. It is estimated that the project will produce 6,600 new jobs over a 25-year development period. This will come about principally as a result of new industries which will spring up along the shore of the reservoir which will provide a new navigation channel 30 miles long. In addition to a navigable channel, the area is presently served by a major railroad, and there is easy access to interstate highway systems. The 5,000 acres of controlled navigable waterfront land which would become available in the Tellico project for locating industry, would be an economic boom to the eastern part of the State in which there are presently only 1,433 acres of such land above Chattanooga. The proposed industrial area is also served by a new multimillion dollar water treatment plant located on the banks of the proposed reservoir and funded by Monroe and Loudon Counties, with grants from Housing and Urban Development, Appalachian Regional Commission, and Tennessee Valley Authority and a loan from Farmers Home Administration. The water treatment plant is designed for a capacity of 8.6 million gallons per day, or to meet the needs of the year 2000, in keeping with the development and growth expected as a result of the Tellico project.

With regard to a proposed industrial park and port facility on the reservoir in Monroe County, the Tennessee Department of Economic and Community Development said:

> As the industrial and economic development agency of Tennessee State Government, we consider this proposed park and port facility to have one of the highest potentials in the state in terms of future industrial development.

The planned industrial development is located in Monroe County, near Vonore, Tennessee. Considerable work and planning have gone into the development initially of a 350-acre industrial port site. Federal grant funds for roads, water and sewer totaling $1,300,000 have been tentatively approved for fiscal year 1977-78, by other federal agencies. Many hours have been spent by local individuals in planning the industrial park, as well as dollars. Monroe County Court has approved the development of the industrial park.

Not only will the completion of the dam and reservoir and the further development of the industrial park help relieve the unemployment situation in Monroe County, but it will also provide jobs for surrounding counties.

There will also be an increase of tourism caused by the attraction of the lake, together with the parks and recreational areas to be developed. The project area, situated as it is adjoining the Great Smoky Mountains National Park and the Cherokee National Forest, is ideally suited for such recreational development. Among other things, the State of Tennessee has plans for the development of a 1,000-acre state park in the area. The Department of Conservation budgeted in excess of $120,000 for the study and presented a plan for a historic park oriented toward interpretation of the significance of Fort Loudoun, Tellico Blockhouse, and the McGhee-Tyson House as restored;

the total estimated cost for such park to be $875,000. A rustic park with camping, cabins, and water recreational facilities was proposed in conjunction with the historic park at an estimated cost of $1,350,000.

The Tennessee Department of Transportation and TVA shared responsibility for the relocation of U.S. 411 and state routes 72 and 95. The Department has obligated $2,366,000 to date. Approximately $8.6 million remains to be spent for completion of highway relocations in the reservoir area.

It is needless to elaborate further on the many substantial benefits to be derived from this project. Suffice it to say that it is a good project which represents many years and untold thousands of hours in its planning at the federal, state, and local levels. It has been thoroughly analyzed, debated, and funded by Congress every year since 1966. A three-volume Environmental Impact Statement has been prepared by TVA and presented to the Congress, the President, and the public. That statement has been exhaustively examined, litigated, and approved by the federal courts. *Environmental Defense Fund v. Tennessee Valley Authority,* 371 F. Supp. 1004 (E.D. Tenn. 1973), *aff'd,* 492 F.2d 466 (6th Cir. 1974). To ignore these basic facts would be an insult to the Nation's taxpayers, to the careful analysis made by TVA, to the Congress, and to the many supporters of the project who have devoted tireless energy and effort to the project. Congress, being informed of all these matters, has directed that the project be completed so that its benefits can be realized The dam is now completed and is ready to have its gates lowered to begin filling the reservoir.

The Sixth Circuit Court of Appeals specifically said that TVA had not acted in bad faith. The court even praised TVA for its efforts to find a new home in the Hiwassee River for the snail darter. Yet, it made a strict application of the law (Endangered

Species Act) to the facts in this case, overlooked the equities involved, and completely ignored the species "man." Under the Endangered Species Act, as with anything else, there has to be some balancing of the equities—which is another way of saying that a commonsense approach ought to be applied.

Surely Congress did not intend, by enacting the Endangered Species Act, that a project in this stage of completion should be scrapped. The district court found that the only alternative was to complete the project or scrap it, and that to scrap it would result in an irretrievable loss of $53 million already invested—not to mention the loss of all the benefits which only the dam and reservoir can produce, such as navigation, flood control, electric power, water supply, etc.

To interpret the Endangered Species Act as requiring such a result is shocking to the ordinary citizen. We submit that Congress obviously did not intend the Act to relate back and nullify everything Congress itself has done since 1966 when it authorized this project to be constructed and has continued to appropriate funds for its completion with full knowledge of the snail darter and the decision of the court of appeals. We think that the district court was right in its decision, and that the court of appeals was wrong. We cannot add to or improve upon the reasoning and analysis of the law as found in the district court's decision, and we ask that it be adopted by this honorable Court.

CONCLUSION

For the reasons stated in the opinion of the learned district court, the decision of the court of appeals should be reversed and the complaint dismissed.

Respectfully submitted,

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Monroe County, Town of Tellico Plains, Tennessee, Town of Madisonville, Tennessee, Town of Vonore, Tennessee, City of Sweetwater, Tennessee, The Little Tennessee River Port Authority, Monroe County Chamber of Commerce and Tellico Area Services System

December 22, 1977

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1200 United American Bank Bldg.
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Herbert S. Sanger, Jr., Esq.
General Counsel
Tennessee Valley Authority-E11B33
400 Commerce Avenue
Knoxville, Tennessee 37902

RE: Tennessee Valley Authority vs.
Hiram G. Hill, et al
No. 76-1701

Dear Messrs. Dougherty and Sanger:

I represent Monroe County, Town of Tellico Plains, Tennessee, Town of Madisonville, Tennessee, Town of Vonore, Tennessee, City of Sweetwater, Tennessee, The Little Tennessee River Port Authority, Monroe County Chamber of Commerce and Tellico Area Services System, who wish to file an amici curiae brief on behalf of petitioner in the above case now pending before the Supreme Court. If you have no objection, please indicate your consent to the filing of such brief by signing this letter in the space provided.

Sincerely yours,

_____
s/Robert J. Pennington

RJP/dm

APPENDIX A

As one of the attorneys for respondent in this case, I hereby consent to the above request

s/W. P. Boone Dougherty
Attorney for Respondents

As one of the attorneys for petitioner in this case, I hereby consent to the above request

s/Herbert S. Sanger, Jr.
General Counsel
Tennessee Valley Authority